

REMARKS

Applicants kindly acknowledge that there are no prior art rejections remaining in the application.. Thus, the only rejection remaining in the application is the new rejection under 35 U.S.C. §112¶1, which was issued in the final rejection.

Applicants thank Examiner Lien Tran for the Interview of August 29, 2003 to discuss the §112¶1 rejection. During the interview, the Applicants identified sections of the specification that support the amendment “wherein the amounts of the grain/seed source of soluble fiber and the processed source of soluble fiber are selected to provide a low glycemic index.” After reviewing these sections, the Examiner acknowledged that the specification appears to satisfy the written description requirement, but requested that the Applicants file a response identifying those sections for the Examiner’s consideration. In accordance with the Examiner’s request, Applicants respectfully submit this response and respectfully request that the rejection under 35 U.S.C. §112¶1 be withdrawn.

1. REJECTION UNDER 35 U.S.C. §112 ¶1.

A. Office Action Rejection.

Claims 1-47 were rejected under 35 U.S.C. §112 ¶1 as failing to comply with the written description requirement. The Office action asserts that the limitation “the amounts of the grain/seed source of soluble fiber and the processed source of soluble fiber are selected to provide a low glycemic index” is not supported by the original disclosure, and that there is no disclosure of the correlation between the amounts of fiber selected an the glycemic index or selecting the amounts of soluble fibers to provide a low glycemic index.

Applicants respectfully traverse the rejection as discussed during the interview and submit the following remarks.

B. Written Description Standards and Requirements Under 35 U.S.C. §112 ¶1.

In assessing the written description requirement, the Examiner bears the initial burden and must have a reasonable basis to challenge the adequacy of the written description. The

Examiner must present by a preponderance of the evidence why a person skilled in the art would not recognize in an applicant's disclosure a description of the invention defined by the claims. MPEP §2163.04.

In order to satisfy a written description requirement, the specification must convey with reasonable clarity to those skilled in the art that, as of the filing date sought, applicant was in possession of the invention as now claimed. MPEP §2163.02. An applicant may show possession of the claimed invention in a variety of ways, including by describing the claimed invention with all of its limitations using such descriptive means as words, structures, figures, diagrams, and formulas that fully set forth the claimed invention. MPEP §2163.02. Possession of the invention may also be shown by a description of an actual reduction to practice. MPEP §2163.02. Each claim limitation must be expressly, implicitly, or inherently supported in the originally filed disclosure. MPEP §2163.05. However, the subject matter of the claim need not be described literally (i.e., using the same terms) in order for the disclosure to satisfy the description requirement. MPEP 2163.02.

C. The Specification As Filed Satisfies the Written Description Requirement and Supports the Amendments to Claims 1 and 28.

In accordance with the Examiner's request, Applicants refer to sections of the specification that support the amendment "wherein the amounts of the grain/seed source of soluble fiber and the processed source of soluble fiber are selected to provide a low glycemic index." For example, the specification describes different ranges of amounts of grain/seed soluble fiber and processed soluble fiber. See, e.g., p. 4, lines 4-17 (grain/seed soluble fiber) and 18-32 (processed source of soluble fiber). The specification also recites "selecting the desired amount of soluble fiber." See, e.g., p. 3, lines 18-24. The specification further describes the correlation between soluble fiber and decreasing the glycemic index. See, e.g., p. 3, lines 18-20; p. 3, line 33 – p. 4, line 2. Applicants also refer to Examples 1-4 which describe in detail four different bread products according to the present invention. p. 7, line 16 – p. 8, line 27.

The Applicants respectfully submit that the amendments to independent claims 1 and 28 are clearly supported by the application as filed. The application conveys with reasonable clarity to those skilled in the art that the applicants possessed the claimed invention, particularly considering that the claim limitation is discussed in various sections of the specification as filed, thereby being "expressly, implicitly, or inherently supported in the originally filed disclosure" and further considering that the applicant has shown possession of the claimed invention by describing an actual reduction to practice of four different bread products according to the present invention. MPEP §§ 2163.02 and 2163.05.

II. CONCLUSION

Based on the forgoing remarks, the Applicants respectfully request that the rejection under 35 U.S.C. §112 ¶1 be withdrawn and respectfully submit that the application is in condition for allowance. If there are any remaining issues that can be resolved by telephone, Applicants invite the Examiner to contact the undersigned at the number below.

Respectfully submitted,

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